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April 3,2003

VIA HAND DELIVERY

Ms. Marlene H. Dortch, Secretary Federal Communications Commission Wireline Competition Bureau P.O. **Box** 358145 Pittsburgh, PA 15251-5145 FCC/MELLON APR 0 3 2003

Re:

In the Matter of the Application of Digital Teleport, Inc. and Century Tel Fiber Company II, LLC for Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended, lo Transfer Control of Certain Telecommunications Assets of Digital Teleport, Inc. to Century Tel Fiber Company II, LLC

Dear Ms. Dortch

On behalf of Digital Telepon. Inc. ("DTI") and CenturyTel Fiber Company II, LLC ("CTF 11") (together, "Applicants"). enclosed please find an original and six (6) copies of an application for Commission approval to transfer control of certain telecommunications assets of DTI to CTF II. Also enclosed is check in the amount of \$860.00, payable to the Federal Communications Commission, which satisfies the filing fee required for this application under line 2.b of Section 1.1 105 of the Commission's rules.

Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please do not hesitate to contract **us** if you have any questions regarding this filing.

Respectfully submitted.

Russell M. Blau Brett P. Ferenchak

Enclosures

cc: Stacey W. Goff (CTF II)
Daniel Davis (DTI)

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

)
In the Matter of the Application of)
Digital Teleport, Inc.)
and) Docket No
CenturyTel Fiber Company 11, LLC)))
For Authorization Pursuant to Section 214 of the	
Communications Act of 1934, as Amended, to)
Transfer Control of Certain Telecommunications)
Assets of Digital Teleport, Inc. to CenturyTel)
Fiber Company II, LLC)
)

APPLICATION

Digital Telepon. Inc. ("DTI") and CenturyTel Fiber Company II, LLC ("CTF II") (collectively "Applicants"). through their undersigned counsel hereby request authorization pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (the "Act") and Section 63.04 of the Commission's Rules. 47 C.F.R. § 63.04, to enable Applicants to consummate CTF II's acquisition of all the operating assets of DTI, as approved by the United States Bankruptcy Court for the Eastern District of Missouri.' CTF 11, a subsidiary of CenturyTel,

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DTI and certain of its affiliates filed for bankruptcy on December 31, 2001 and currently operate under Chapter 11 of the U.S. Bankruptcy Code in a case before the U.S. Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"). See Chapter 11 Case No. 01-54369-399 (Bankr. E.D. Mo.). The acquisition was approved by the Bankruptcy Court in In re: Digital Teleport, Inc., Order Approving Assel Purchase Agreement with CenturyTel Fiber Company II, LLC and Authoriting Sale of Assets Free and Clear & Liens, Interests, and Encumbrances; And Approving Assignment of Certain Executory Contracts and Unexpired Lease Pursuant to Sections 363 and 365 & the Bankruptcy Code, Case No. 01-54369-399 (Bankr. E.D.Mo. Feb. 13, 2003) (hereinafier, "Sale Order"). The Sale Order is attached hereto as Exhibit A.

Inc., is acquiring the core domestic telecommunications assets of DTI, including the equipment, fiber routes and customers of DTI (the "Transaction"). This Transaction will not result in a loss or impairment of service, and therefore this Application is being filed pursuant to Section **63.04** of the Commission's Rules, 47 C.F.R. § **63.04**.

Because DTI is in the process of terminating its operations through a Chapter 11 bankruptcy proceeding: and in order to complete an orderly transition and the continued provision of high quality competitive telecommunications services, Applicants respectfully request that the Commission act expeditiously to grant the authority requested herein no later than May 31, 2003, in order to assure the orderly transfer of the assets and to avoid disruption of the business of DTI that would otherwise occur.

1. **DESCRIPTION OF THE** APPLICANTS

A. Century Tel Fiber Company II, LLC ("CTF 11")

CenturyTel Fiber Company II, LLC is a recently formed Louisiana limited liability company with its principal business office located at 100 CenturyTel Drive, Monroe, Louisiana, 71203. CTF II is a wholly owned direct subsidiary of CenturyTel, Inc. formed specifically in conjunction with the proposed acquisition of the core domestic telecommunications assets and operations of DTI.

CenturyTel, Inc. is organized under the laws of the State of Louisiana with its principal business office located at 100 CenturyTel Drive, Monroe, Louisiana, 71203. CenturyTel, Inc. and its subsidiaries provide communications services including local, long distance, Internet access and data services to more than 3 million customers in 22 states. By the end of 2002, CenturyTel, Inc. had nearly 2,415,000 access lines in service and was providing long distance service to almost 650,000 subscribers. CenturyTel, Inc.'s success in developing innovative products and services and

in expanding its geographic reach has translated into impressive growth in recent years, and has created **a** company that is extremely well-qualified financially to operate and expand the DTI business. CenturyTel, lnc. is publicly traded on the New York Stock Exchange under the symbol "CTL" and is included in the S&P 500 Index.

For **the** Commission's reference, an organizational diagram of CenturyTel, Inc.'s corporate structure is attached hereto **as** Exhibit B.

C. Digital Teleport, Inc. ("DTI")

Digital Teleport, Inc., is a corporation organized under the laws of the State of Missouri with its principal business office located at 14567 North Outer Forty Road, Chesterfield, Missouri, 63017. DTl provides wholesale fiber optic transport services in secondary and tertiary Midwest markets to national and regional telecommunications carriers. The company's network spans 5,700 route miles across Arkansas, Illinois: Jowa, Kansas, Missouri, Nebraska, Oklahoma and Tennessee. DTl is a wholly owned operating subsidiary of DTI Holdings, Inc., a corporation organized under the laws of the State of Missouri with its principal business office located at 14567 North Outer Forty Road, Chesterfield, Missouri, 63017. DTI Holdings, Inc. has, together with DTI, filed for reorganization pursuant to Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Eastern District of Missouri. DTI Holdings, Inc. will be liquidated upon the closing of the sale of DTI's assets to CTF II.

II. DESCRIPTION OF THE TRANSACTION

DTI provides wholesale fiber optic transport services in secondary and tertiary markets to national and regional communications carriers. DTI also provides Ethernet service to enterprise customers and governmental agencies in office buildings in areas adjacent to the company's metropolitan network rings. DTI purchased a nationwide network of dark fiber with plans to build a

national long-haul transmission network. but was unable to obtain the funding to complete and operate such a network. As a result, DTI found it necessary to **file** for Chapter 11 reorganization on December 31, 2001, to facilitate an orderly withdrawal from the national long-haul business.

Pursuant to a bidding process overseen by the Bankruptcy Court, CTF II has agreed to acquire the core domestic telecommunications assets of DTl pursuant to Sections 363 and 365 of the Bankruptcy Code' and will operate those assets and continue to provide services to DTI's customers. In order to complete the Transaction, CTF II entered into an Asset Purchase Agreement with DTI for the sale of substantially all of the assets utilized by DTI to operate its domestic relecommunications business, as well as the assignment of certain contracts and leases. In consideration for these assets, CTF II will provide the DTI bankruptcy estate \$38 million in immediately available funds upon closing of the Transaction. The Asset Purchase Agreement, and the sale of assets to CTF II. was approved by the Bankruptcy Court on February 13, 2003. The Court found that the approval of the sale to CTF II was in the best interest of DTI, its creditors, its estate, and other parties in interest.³

According to the terms of the court-approved Asset Purchase Agreement, all required regulatory approvals must be received for the assignment of assets from DTI to CTF II and the assumption by CTF II of DTI's business and operations before the Transaction can close. Failure to obtain the required regulatory approvals in a timely manner could endanger the Transaction, in which case the DTI business may be seriously harmed. Applicants therefore respectfully request that the Commission act expeditiously to grant the authority requested herein no later than May 31,2003, in order to assure the orderly transfer of the assets and the continued

See Sale Order at Exhibit A.

See Sale Order at para. 8.

provision of a competitive level of service to DTI customers: as well as to allow for the transition process necessary to avoid disruption of the business of DTI that would otherwise occur,

III. PUBLJCINTEREST STATEMENT

Applicants respectfully submit that the Transaction serves the public interest. In particular, Applicants submit that (1) the Transaction will prevent disruption of the business of DTI and will be conducted in a manner that will be virtually transparent to its customers; and (2) the establishment of CTF II as a strong competitor in the telecommunications market will assure that the benefits of competition generated by DTI's presence will not be lost to consumers.

As discussed above, the orderly transition approved by the Bankruptcy Court will assure that the customers of DTI will not suffer a decline in the level of competitive services offered as a result of DTI's financial situation. Moreover, in order to assure that the transaction will be virtually transparent to DTI's existing customers, CTF II will adopt the existing DTI tariffs and service contracts so that customers can continue to receive the same rates and services during the transition to CTF II. Applicants also intend to keep customers informed of any significant changes to their services, All customers of DTI receive their services pursuant 10 individual contracts, which will be assigned to and assumed by CTF II pursuant to the Bankruptcy Court's Sale Order. All customers were provided with notice sent via first class mail on January 24, 2003, of the Transaction and the proposed assumption and assignment of contracts to CTF II and given assurances regarding the continued provision of DTI services. A copy of that notice is attached hereto as Exhibit C.

⁴ All of DTI's customers are telecommunications carriers, government agencies, or large enterprises purchasing dedicated services under contract. Therefore, traditional consumer slamming concerns are not applicable in this case.

Failure to approve the Transaction will harm the public interest. Not only would this pose a

risk of impairment of service to existing DTI customers, it would also result in the diminution of

competition, since DTI's current financial position has impeded its ability to compete aggressively

in the telecommunications market. Specifically, DTI's bankruptcy status has limited its ability to

expand the services and facilities it needs to compete for new customers and expand services

available to existing customers.

Given that, absent this Transaction, DTl may not be able to continue to provide a

competitive level of service as a result of its financial situation, Applicants hope to receive the

necessary authorization no later than May 31,2003.

IV. INFORMATION REQUIRED BY SECTION 63.04

Applicants submit the following information in support of their request for Section 214

authorization for the transfer of assets pursuant to Section 63.04(a) of the Commission's Rules, 47

C.F.R§ 63.04(a).

Name, address and telephone number of each Applicant: (1)

Transferors:

Digital Teleport, Inc.

14567 North Outer Forty Road

Chesterfield, MO 63017 Tel: (314) 880-1000

Fax: (314) 880-1999

FRN: 0005-6540-09

Transferees:

CenturyTel Fiber Company II, LLC

100 Century Tel Drive

Monroe, LA 71203

Tel: (318) 388-9000

Fax: (318) 388-9488

FRN: 0008-60-7277

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(2) State of Organization:

Transferor: DTI is organized under the laws of the State of Missouri.

Transferee: CTF ll is organized under the laws of the State of Louisiana.

(3) Correspondence concerning this Application should be addressed to:

Counsel for Joint Applicants:

Russell M. Blau Brett P. Ferenchak Swidler Berlin Shereff Friedman, LLP 3000 K Street, NW, Suite 300 Washington, DC 20007-5116 (202) 424-7835 (Tel) (202) 295-8478 (Fax)

With copies to:

For Transferor:

Daniel Davis
Senior Vice President and General Counsel
Digital Teleport, Inc.
14567 North Outer Forty **Road**Chesterfield, MO 63017
(314) 253-6608 (Tel)
(314) 880-1999 (Fax)

For Transferee:

Stacey W. Goff. Esq.
Vice President and Assistant General Counsel
CenturyTel, Inc.
100 CenturyTel Drive
Monroe, LA 71203
(318) 388-9539 (Tel)
(318) 388-9488 (Fax)

(4) Equity Ownership of Transferee:

The following entity directly or indirectly owns at least ten (10) percent of the equity of Transferee Century Tel Fiber Company II, LLC:

CenturyTel, Inc. Name: 100 CenturyTel Drive Address:

Monroe, LA 71203

U.S. Citizenship: Percentage owned: 100%

Principal business: Telecommunications

Century Tel, Inc. is publicly traded on the New York Stock Exchange under the ticker symbol "CTL." No person or entity directly or indirectly owns at least ten (10) percent of the equity of Century Tel. Inc.

- Applicants hereby certify, pursuant to Sections 1.2001 through 1.2003 of the (5) Commission's Rules (implementing the Anti-Drug Abuse Act of 1988, 21 U.S.C.§ 853), that no party to this Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- Description of the transaction: (6)

A description of the Transaction is provided in Section II of this Application.

Geographic areas affected: **(7)**

> DTI currently provides wholesale fiber optic transport service in Arkansas, Kansas, Missouri, Oklahoma and Tennessee. CTF II is in the process of obtaining authorization to provide local exchange and interexchange telecommunications services in Arkansas, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Nebraska, Oklahoma, Tennessee and Texas. CenturyTel, Inc., through its subsidiaries, provides communications services including local, long distance, Internet access and data services to more than 3 million customers in Alabama, Arizona, Arkansas, Colorado, Idaho, Indiana, Iowa, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, Ohio, Oregon, Tennessee, Texas, Washington, Wisconsin and Wyoming.

Streamlined Processing **is** Appropriate for this Application: **(8)**

This Application does not fit into the presumptive streamlined categories of Section 63.03(b) of the Commission's Rules, 47 C.F.R. § 63.03(b), because some of the geographic areas in which transferee CTF II will be providing competitive dedicated transport services are served by a dominant local exchange carrier that is an affiliate of CTF II. Applicants note that the presumptive Application does not fit into one of the presumptive categories, it is nevertheless qualified for streamlined treatment because: (i) the Transaction does not raise significant competition concerns, and (ii) the failure to obtain approval of the Transaction from the Commission in a timely manner would result in the diminution of competition, since DTI's current financial position has impeded its ability to compete aggressively in the telecommunications market.

The Transaction does not raise significant competition concerns that would make this Application ineligible for streamlined treatment. Both transferor DTI and transferee CTF II, together with its affiliates, hold significantly less than ten percent of the interstate, interexchange market combined. DTI does not offer local exchange services, and therefore is not an existing competitor of CenturyTel, Inc.'s local exchange subsidiaries. Upon consummation of the Transaction and the receipt of all necessary regulatory approvals, CTF II will begin providing dedicated transport services to geographic areas in the following thirteen states: Arkansas, Colorado: Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Nebraska, Oklahoma, Tennessee and Texas. Of these thirteen states with over 300 existing potential service delivery locations, less than 10 percent of these locations are in service areas where an affiliate is the dominant local exchange carrier and all of these locations are in only 3 states: Arkansas, Colorado and Missouri. However, CTF II will also be providing dedicated transport services in many other exchange service areas in these states, as well as in the other ten states, where the dominant local exchange carrier is neither a party to nor an affiliate of a party to this Transaction. In addition, less than 15 percent of DTI's revenue is derived from service areas where an affiliate of CTF II is the dominant local exchange carrier. Finally, the Transaction is also subject to the receipt of regulatory approval from the state public utilities commissions for these states, each of which has the authority to ensure that any potential competitive concerns related to services within their respective states are adequately addressed. For these reasons, the Transaction does not raise any significant competition concerns that would make this Application ineligible for streamlined treatment.

Streamlined treatment of this Application is also appropriate because the failure to obtain approval of the Transaction from the Commission in a timely manner would pose a **risk** of the disruption of the business of DTI and would also result in the diminution of competition, since DTI's current financial position has impeded its ability to compete aggressively in the telecommunications market. Specifically: DTI's bankruptcy status has limited its ability to expand the services and facilities it needs to compete for new customers and to continue expanding competitive services to existing customers. Given that, absent this Transaction, DTI may not be able to continue to provide a competitive level of service as a result of its financial situation, Applicants hope to receive the necessary authorization no later than May 31, 2003. Without approval within this timeframe, Applicants cannot guarantee that it will be able to continue to provide a competitive level of service to DTI customers. In designating this Application as eligible for streamlined treatment the Commission can help ensure that DTI's existing customers will continue to receive high quality competitive services.

(9) Other FCC Applications:

In connection with this same Transaction, Applicants will also be filing with the Commission an application for the assignment of two private microwave licenses from DTI to CTF II.

(10) Request for special consideration:

Applicants request special consideration of this Application due to the imminent business failure of DTI. As described in the foregoing, DTI is already under the jurisdiction of the

Bankruptcy Court, and the Bankruptcy Court has already approved the Transaction. In order to ensure an orderly and seamless closing of this Transaction, Applicants request expedited treatment of this Application to allow approval to be received as soon as possible, but in any event no later than May 31,2003.

(11) Waiver requests (if any):

None.

(12) **Public** interest statement:

As discussed in Section III above, Applicants respectfully submit that the Transaction serves the public interest. In particular, Applicants submit that (1) the Transaction will be conducted in a manner that will be virtually transparent to these customers; and (2) the establishment of CTF II as a strong competitor in the telecommunications market will assure that the benefits of competition generated by DTI's presence will not be lost to consumers.

Failure to approve the Transaction will harm the public interest. Such failure to approve it would result in the diminution of competition, since DTI's current financial position has impeded its ability to compete aggressively in the telecommunications market. Specifically, DTI's bankruptcy status has limited its ability to expand the services and facilities it needs to compete for new customers and expand services available to existing customers.

Given that, absent this Transaction, DTI may not be able to continue to provide a competitive level of service as a result of its financial situation, Applicants hope to receive the necessary authorization no later than May 31,2003.

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V. **CONCLUSION**

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application for the authority to transfer DTI's domestic telecommunications assets, operations and customers to CTF II. In light of the exigent circumstances and, in particular the need to ensure continuity of a competitive level of service to existing customers, Applicants respectfully request expedited treatment to permit Applicants to complete the Transaction no later than May 31,2003.

Respectfully submitted,

Brett P Ferenchak

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K Street, NW, Suite 300

Washington, DC 20007-51 16

(202) 424-7835 (Tel)

(202) 424-7645 (Fax)

COUNSEL FOR APPLICANTS

Dated: April **3,2003**

LIST OF EXHIBITS

Exhibit **A** Sale Order Approved by the Bankruptcy **Court**

Exhibit B Assignee's Corporate Structure

Exhibit C Notice to Customers

Verifications

Exhibit A

Sale Order Approved by the Bankruptcy Court

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

In re:

Chapter 11 Bankruptcy

Digital Telepon. Inc.

Debtor. Bky 01-54369-399

Hearing Date: February 13, 2003

Hearing Time: 2.00 p.m.

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ORDER APPROVING ASSET PURCHASE AGREEMENT WITH
CENTURYTEL FIBER COMPANY II, LLC AND AUTHORIZING SALE OF ASSETS
FREE A'' CLEAR OF LIENS, INTERESTS, A'' ENCUMBRANCES; AND
APPROVING ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES PURSUANT TO SECTIONS 363 AND 365 OF THE
BANKRUPTCY CODE

This matter came before the Coun on February 13, 2003 for hearing on the Motion of Digital Teleport, Inc. (the "Debtor") For Entry of an Order: (A) Authorizing Sale of Assets Free and Clear of Liens, Claims, and Encumbrances, and (B) Authorizing Assumption and Assignment of Leases and Executory Contracts to CenturyTel Fiber Company 11, LLC. an affiliate of CenturyTel. Inc. or Such Higher and Better Bidder as May Be Presented (the "Sale Motion"). Appearances as noted in the record.

At a previous hearing held by this Coun on January 21,2003, the Court issued an Order Approving Bid Procedures and Break-Up Fee (the "Procedure Order"). The assets to be sold (the "Assets") are described in detail in the Asset Purchase Agreement between Debtor and CenturyTel Fiber Company II, LLC as the prevailing bidder (the "Purchaser") tiled with the Court as an exhibit hereto (the "Asset Purchase Agreement"), which is substantially the same form as was attached as an exhibit to the Sale Motion.

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given. as evidenced by the certificates of service filed with this **Court.** to all creditors, employees and interestholders; all parties in interest having been heard, or having had the opponunity to be heard; the **Court** has heard testimony and received evidence in support of approval of the sale of assets; and upon such testimony, the motions, all prior proceedings held in the Debtor's case, the arguments of counsel and the record of the hearings on the motions held before this Coun, the relief herein is granted. Any and all objections to the sale transaction or to the assumption and assignment of certain executory contracts or unexpired leases or the assence cure amounts related thereto have either been settled or have been resolved as set forth in the record at the sale hearing; and

The Court having ruled that this Coun has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334; venue of this proceeding in this district being proper pursuant to 28 U.S.C.§ 1409(a); the Sale Motion constituting a core proceeding pursuant to 28 U.S.C.§ 157(b)(2)(A) and (N); and the statutory predicates for the relief requested herein being Section 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004; and after due deliberation and sufficient cause appearing therefor;

THE **COURT** HEREBY FINDS in addition to the Court's findings of fact and conclusions of law set forth on the record at the hearings, which shall be incorporated herein by reference, that:

- 1. The Debtor has followed in good faith the procedures for notice and sale of the Assets set forth in the Procedure Order.
- 2. Proper, timely, adequate and sufficient notice of the Sale Motion, the hearings and the auction scheduled herein for sale of the Assets has been provided in accordance with

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Section 102(1) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002 and 6001, and the Procedures Order.

- No other or further notice of the Sale Motion, of the hearings or of the entry of this Order is necessary. All requirements of Bankrupicy Code § 363(b) and (f), § 365 and any other applicable law relating to the sale of the Assets contemplated by the Asset Purchase Agreement have been satisfied. The defined terms used but not otherwise defined herein shall have the meaning set forth in the Asset Purchase Agreement.
- 4. The sale process was conducted in good faith pursuant to the terms of the Procedure Order. The Debtor has marketed its assets over the course of the past 12 months and has given approximately 40 days notice of this sale hearing to potential rival bidders. Potential rival bidders were given an adequate period to submit qualified bids and no parties submitted a rival bid or appeared at the February 10, 2003 auction.
- 5. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities, including (a) all parties who claim an interest in or liens upon the Assets; (b) all government taxing authorities who have, or as a result of the sale of assets may have, claims, contingent or otherwise, against the Debtor; (c) all parties to executory contracts or unexpired leases with the Debtor which are currently in effect; and (d) employees of the Debtor.
- 6. The Debtor is authorized by this Order, and therefore has full power and authority, to consummate the transactions contemplated by the Asset Purchase Agreement without further corporate authorization and Paul Pierron, Daniel Davis, Andrew Whipple or any persons authorized by them to sign a document on behalf of the Debtor are authorized signatories to bind the Debtor.

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- 7. Sufficient business justification exists for the sale of the Assets pursuant to Section 363(b) of the Bankruptcy Code outside of a plan of reorganization, and the Debtor has satisfied the standards of *In re Lionel Carp.*, 722 F.2d 1063 (2d Cir. 1983), in that, among other things:
 - a. **A** sale should be accomplished to lock in the value of the business and provide a source of liquidity to fund distributions to creditors and avoid damage to the prospects of the business through it remaining in Chapter 11. The major creditors constituencies of the Debtor support this sale.
 - b. Several material customers have indicated that they are withholding certain orders during the pendency of Chapter 11 and would like to see the business on financially stronger and better capitalized footing.
 - c. Efforts to fund a stand-alone plan of reorganization have been difficult in this market and such a plan will not provide as much liquidity for creditors as an asset sale.
 - d. Cenain regulatory approvals are necessary for **a** sale to close and it is desirable to **get** a sale approved promptly so that the regulatory approval process can begin. CenturyTel is not willing to expend the time and expense of pursuing regulatory approvals until it knows that its bid is approved.
 - e. Claims against the Debtor's estate will be minimized as a result of the prompt consummation of a sale of Assets. The Purchaser will be assuming certain liabilities of the Debtor as set forth in Section 2.1(c) of the Assel Purchase Agreement. To the extent the Purchaser assumes such liabilities, the holders of such claims will have no further recourse, against the Debtor or its estate and the right of the holders of such claims to pursue the Debtor or the estate for liability arising from such liabilities will be extinguished. Further, there will be no rejection damage claims with respect to the Contracts & Leases which are assumed and assigned to Purchaser.
- 8. The Assel Purchase Agreement represents the highest and best offer for the Assets, the purchase price is fair and reasonable, and the sale of the Assets at this time is in the best interest of the Debtor, its creditors and its estate. Without limiting the foregoing, the purchase price to be paid by the Purchaser constitutes full and adequate consideration and reasonably equivalent value for the Assets.

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- 9. The aggregate sale price of all Assets either (i) exceeds the aggregate amount of the applicable liens on the Assets, (ii) the holders of interests could be compelled to accept money satisfaction of such interests, or (iii) the holders of interests consent to the sale pursuant to Section 363(f). **KLT** Telecom, Inc. has consented to the sale. All parties who submitted objections to the sale based on alleged secured claims are protected because to the extent their secured claims were timely and properly assened in these cases, those liens will attach to the sale proceeds in the priority and to the extent of the value of their secured claim in the applicable collateral if included as part of the Assets.
- action (a) by any party under a right or option to effect any transfer, assignment, license. forfeiture, modification, rights of first refusal, or termination of the Debtor's or any purchaser's interest in the Assets or any similar rights and (b) relating to taxes under or **out** of, in connection with, or in any way related to the operations of the Debtor's business prior to the Closing Date and the transfer of the Assets. Purchaser is acquiring all of **its** rights or title of the Debtors in and to the **Assets** free and clear of all liens. claims, interests, charges. equities, restrictions, security interests, encumbrances or the like under Section 363 and other applicable sections of the Bankruptcy Code and such acquisition shall not subject Purchaser and its affiliates to any liability whatsoever not expressly assumed with respect to the operation of the Debtor's business prior to the Closing Date under any theory of law or equity (including, without limitation, under any theory of successor or transferee liability whatsoever), other **than** Assumed Liabilities.
- 11. The Asset Purchase Agreement was negotiated, proposed and entered into in good faith, from arm's length bargaining positions, by the parties. Purchaser is a good faith purchaser for all purposes pursuant to Section 363(m) of the Bankruptcy Code. Neither the Purchaser nor

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the Seller engaged in any conduct that would cause or permit the Asset Purchase Agreement to be avoided pursuant to Bankruptcy Code § 363(n).

- **12.** The Debtor shall only be required to pay any Cure Costs related to the Contracts & Leases as set forth in the notice given to the Procedure Order or as determined in a final order of this Court based on a timely objection to the proposed cure amount under the Procedure Order. A chart summarizing **all** cure or assumption objections received and their resolution or status is attached hereto and incorporated herein. Any other or greater claims for Cure Costs shall be barred and cannot be asserted against the Debtor or the Purchaser. Any other closing costs shall be paid in accordance with the Asset Purchase Agreement. Purchaser has demonstrated reasonable assurance of future performance. Section 365 and the procedures in the Procedure Order related to assignments of Contracts & Leases have been complied with. **All of** the Contracts & Leases remain in effect and are assignable. Any counterpany not timely objecting to assignment shall be deemed to have consented to assignment.
- 13. Section 1146(c) of the Bankruptcy Code is applicable to the transactions proposed herein. Consequently, the Debtor is authorized to consummate the transactions contemplated hereby and to convey the Assets, without the payment of any stamp or other similar lax that may be applicable to the conveyance of Assets pursuant to the Transaction Documents.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

A. To the extent not previously approved, the Sale Motion is hereby granted in all respects, except to the extent specifically set forth in this Order, and all objections, to the extent not settled or withdrawn, are overruled.

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B. The Asset Purchase Agreement is hereby approved.

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- The Debtor is authorized and empowered to fully perform under, consummate and implement the Asset Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement: and to lake all further actions as may reasonably be requested by Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to Purchaser, or reducing to possession, any or all of the Assets, or as may be otherwise necessary or appropriate to the performance of the obligations as contemplated by the Asset Purchase Agreement (collectively, the "Transaction Documents").
- D. Pursuant to Section 363(f) of the Bankruptcy Code, the Assets shall be sold and transferred to Purchaser, and upon the closing, sale 2nd transfer of Asseis as provided under the Asset Purchase Agreement, the Assets shall be free and clear of all interests, including liens, claims, interests and encumbrances of any nature arising or accruing prior to or on the closing date of the Asset Purchase Agreement, and whether imposed by agreement, understanding, law, equity or otherwise, with all such interests to attach to the net proceeds in the order of their priority with the same validity, force and effect which they now have as against the Assets.
- E. Nothing contained in any Chapter 11 plan confirmed in this case or ihe order of confirmation confirming any Chapter 11 plan shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Order.
- The terms and provisions of the Assel Purchase Agreement, together with the terms and provisions of this order shall be binding in all respects upon, and shall inure to the benefits of the Debtor, its estate, its creditors and shareholders, Purchaser, and their respective successors and assigns, and any affected third parties including but not limited to all non-Debtor parties to all unexpired leases or executory contracts to be assigned to Purchaser pursuant to the

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Assel Purchase Agreement and persons asserting a claim against or interest in the Debtor's estate or my of the Assets to be sold to Purchaser pursuant to the Asset Purchase Agreement. notwithsranding any subsequent appointment of any trustee for the Debtor under any chapter of Title 11 of the United States Code, as to which trustee such terms and provisions likewise shall be binding in all respects.

- G. Purchaser, having been found lo be a purchaser in good faith, is entitled to the protections of Section 363(m) of the Bankruptcy Code, accordingly, the reversal or modification on appeal of this Order and the authorization to consummate the transactions provided herein shall not affect the validity of any transfer under the Purchase Agreement and this Order to Buyer, unless such transfer is duly stayed pending such appeal. The Asset Purchase Agreement is the product of substantial and good faith negotiations that were conducted at arm's length and without collusion.
- H. The failure specifically to include any panicular provisions of the Asset Purchase Agreement in this order shall not diminish or impair the efficacy of such provision, it being the intent of the Coun that the Asset Purchase Agreement be authorized and approved in its entirely, except as expressly modified herein.
- 1. The Contracts & Leases identified in the Asset Purchase Agreement, including those identified through the Closing Date may be assumed and assigned to Purchaser pursuant to Section 365 of the Bankruptcy Code and the Procedures Order. A complete list of the Contracts & Leases identified as of this hearing date has been provided to CenturyTel, KLT and the Committee. To the extent of any changes, additions or deletions between the schedule as attached to the Asset Purchase Agreement and the schedule as provided to CenturyTel, KLT and

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the Committee, that schedulc will prevail and shall be deemed to modify and supercede the original schedule to the Asset Purchase Agreement in all respects.

- J. All entities who are presently, or as of the Closing (the "Closing Date") may be, in possession of any of the Assets, are hereby directed to surrender possession of the Assets to the Purchaser on the Closing Date and allow Purchaser to retrieve such assets.
- K. The sale of the Assets pursuant to the Tranaction Documents, and any transfer or assignment relating thereto, shall be exempt from any transfer tax, stamp tax or other similar tax pursuant to § 1146(c) of the Bankruptcy Code.
- L. All creditors and other persons, entities and other parties are authorized and directed to execute and deliver to Purchaser such documents or instruments as may be reasonably required by the Debtor or Purchaser (without material cost or expense to such creditors) for the purposes of canceling or discharging of record any claim or lien on any of the Assets that are sold. All applicable governmental entities are directed to recognize the transfer of the Assets free and clear to the applicable purchaser in the public records and to accept and record filings reflecting the same.
- M. The Court retains jurisdiction (i) to enforce and implement the terms and provisions of the Transaction Documents, any amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith, (ii) to prevent any party from pursuing Purchaser or its affiliates for liabilities or obligation related to the Debtor (which Purchaser and its affiliates **may also** enforce in any other court of competent jurisdiction) and (iii) to interpret, implement and enforce the provisions of this Order.
- N. The Transaction Documents and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance

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with the terms thereof, in consultation with the Committee and KLT, without further order of the

Coun, provided that any such modification, amendment or supplement does not represent a

material change to the sales transaction approved hereby.

O. With respect to Union Electric Co., d/b/2 Ameren UE ("Ameren"), the assumption

and assignment of the Amended and Restated Agreement for the Provision of Digital Transpon

Services ("Agreement for Provision") and the Amended and Restated Network Services

Agreement, both as referenced in and/or amended by the court approved Settlement Agreement

between the DTI and Ameren, and the court approved modification thereto, at closing of DTI's

sale of assets are hereby authorized provided that prior to closing: (a) DTI takes all steps

necessary to complete the "Grant of Title" and remove the "other customer traffic" from

Ameren's Network, as required by Sections 1 and 2 of the Agreement for Provision, as amended

and modified pursuant to court order; or (b) Buyer provides to Ameren adequate assurance that

the obligations under sections 1 and 2 of the Agreement for Provision due from DTI will be

completed within a reasonable time.

Dated: February 13,2003

SARRY, S. SCHERMER

UNITED STATES BANKRUPTCY JUDGE

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$\underline{Exhibit\ B}$

Assignee's Corporate Structure

Exhibit C

Notice to Customers

UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

In the Matter Of:)
) CASE NUMBER 01-54369-399
DIGITAL TELEPORT. INC., et al.)
) IN PROCEEDINGS UNDER CHAPTER 11
Debtors)

NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT OF CONTRACT **OR** LEASE AND PROPOSED CURE AMOUNT, IF ANY

Digital Teleport. Inc. ("DTI") proposes to sell substantially all of its business assets to CenturyTel Fiber Company, II ('CenturyTel Fiber') or such higher and better bidder as the above-referenced Bankruptcy Court may approve after an auction ("Prevailing Rival Bidder"). In connection with that sale, CenturyTel Fiber has requested that certain contracts and leases to which DTI is a party be assumed and assigned to CenturyTel Fiber by DTI pursuant to Sections 365 and 363 of the United States Bankruptcy Code.

CenturyTel Fiber or any Prevailing Rival Bidder would acquire the business of DTI. which had revenues in excess of \$21.4 million for 2002 and assets with a book value in excess of \$62.9 million as of December 31, 2002. CenturyTel Fiber has made arrangement to retain key members of DTI's management and employee base to, among other things, maintain relationships with counterparties to DTI's contracts and leases and perform thereunder. DTI and CenturyTel Fiber believe that this provides sufficient evidence of adequate assurance of future performance by CenturyTel Fiber to you. CenturyTel Fiber's parent corporation, CenturyTel, Inc, www.centurytei.com will assist DTI with operational matters, but is not guaranteeing CenturyTel Fiber's future performance under assigned contracts or leases. CenturyTel, Inc. has operations in 22 states, over 7,000 employees and, excluding its recently disposed wireless business, had revenues in excess of \$1.67 billion for 2001 and revenues of \$1.38 billion for the first nine months of 2002. Further information regarding CenturyTel Fiber and its affiliates is available upon request to Stacey W. Goff at (318)-388-9500,

Unless otherwise specifically listed on the attached exhibit, DTI asserts that there are no existing defaults under the contract or lease to which you are counterparty, that such contact or lease is in full force and effect and that *no* cure or damages payment of any nature is due to you as part of the assumption and assignment of such contract or lease under Sections 365 and 363 of the Bankruptcy Code. If you (i) assert a cure or damages amount is due to you or dispute any of the other statements in the prior sentence or the exhibit, or (ii) object to CenturyTel Fiber's ability to perform under the applicable contract or lease, the Bankruptcy Court has entered an order providing that any such objection must be in writing and must be served upon both of the following counsel for DTI so as to be RECEIVED no later than 4 p.m. on February 6.2003.

Daniel Davis
Digital Teleport, Inc.
14567 N. Outer Forty Road
Suite 500
Chesterfield, Missouri 63017
Telephone (314) 880-1000
Facsimile (314) 880-1554
Email: dan.davis@digitalteleport.com

Robert Richards
Sonnenschein Nath & Rosenthal
8000 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
Telephone (312) 876-8000
Facsimile (312) 876-7934
Email: Rrichards@sonnenschein.com

If a Prevailing Rival Bidder is recommended by DTI following the auction, you will receive notice of the identity of that bidder and information regarding that bidder ability to perform by email, phone, facsimile or overnight courier by February 11. 2003. You will then have until noon on February 13, 2003, to request in writing further information or to object in writing to the proposed Prevailing Rival Bidder as assignee by serving both of the above referenced counsels for DTI. THIS WILL NOT BE A SECOND CHANCE TO OBJECT TO THE CURE AMOUNT OR ANY OTHER MATTER (OTHER THAN THE PREVAILING RIVAL BIDDERS ABILITY TO PERFORM), FOR WHICH THE DEADLINE IS FEBRUARY 6.2003 REGARDLESS OF WHO THE ASSIGNEE IS.

DIGITAL TELEPORT, INC. By: Robert E. Richards One of its Counsels

Exhibit To Notice

Name and Address of Counterparty to Contract or Lease:	
Identification of Contract(s) or Lease(s) \log be Assigned (including any amendments thereto):	11
Unless specifically noted below, DTI will seek a finding that there are no defaults under the applicable contract or lease and that no cure or damage amounts are owed to you.	
NONE	

Verifications

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VERIFICATION

STATE OF MISSOURI	}	SS
COUNTY OF ST. LOUIS)	

I, Daniel Davis, being duly **sworn**, depose and state that I am an authorized representative of Digital Teleport, Inc. ("DTI"), the Applicant in the subject proceeding; that I am authorized to make **this** Verification on behalf of DTI; that I have read the foregoing application and exhibits and **know** the content thereof; that the same are true and correct to the best of my knowledge, information and belief.

Daniel Davis

Senior Vice President and General Counsel Digital Teleport, Inc.

Subscribed and sworn to before me this 26th day of March, 2003.

Denning Schmidt Notary Public JENNINE SCHMIDT
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: Jan. 28, 2006

My Commission Expires: Qan, 28, 2006

VERIFICATION

STATE OF LOUISIANA	}	SS
PARISH OF OUACHITA)	

I, Stacey W. Goff, being duly **sworn**, depose and state that I am **an** authorized representative of CenturyTel Fiber Company II, LLC ("CTF II"), the Applicant in the subject proceeding; that I am authorized to make this Verification on behalf of CTF Π ; that I have read the foregoing application and exhibits and know the content thereof; that the same are true and correct to the best of my knowledge, information and belief.

Stacev W. Goff

Vice President and Assistant General Counsel CenturyTel Fiber Company II, LLC

Subscribed and sworn to before me this // day of // day of ______,2003.

Notary Public

My Commission Expires: Stastk